

## Surface Transportation Board, DOT

## § 1110.9

organization, procedure, or practice may be issued as final without notice or other public rulemaking proceedings.

(b) General rulemaking proceedings will be opened by the issuance of either a notice of intent to institute a rulemaking proceeding, an advance notice of proposed rulemaking, or a notice of proposed rules. The Board will publish the notice in the FEDERAL REGISTER, and it will invite the public to participate in the rulemaking proceeding. No notice will be issued when the Board finds for good cause, that notice is impractical or unnecessary or contrary to the public interest.

(c) Notices of proposed rulemakings will include:

- (1) The proposed rules, if prepared;
- (2) A discussion of why the rulemakings are needed and what they are intended to accomplish;
- (3) Identification of significant dates in the proceedings, such as dates by which comments must be filed or on which the rules are proposed to take effect;
- (4) Any relevant addresses;
- (5) The name and phone number of an individual within the Board who can provide further information concerning the proceedings;
- (6) Any supplementary information required; and
- (7) Reference to the legal authority under which the rules are proposed.

(d) In addition to being published in the FEDERAL REGISTER, notices of proposed rulemaking and subsequent notices and decisions in rulemaking proceedings, will be served on the parties and made available to the public through the Office of the Secretary. To the extent possible, the date of service will be the same as the date of publication in the FEDERAL REGISTER. When the service and publication dates are not the same, the date of publication in the FEDERAL REGISTER is controlling for the purpose of determining time periods set by these procedures or by notices issued in individual proceedings.

### § 1110.4 Participation.

Any person may participate in rulemaking proceedings by submitting written information or views. In addition, the Board may invite persons to

present oral arguments, participate in informal conferences, appear at informal fact-finding hearings, or participate in any other proceedings. Information contained in written submissions will be given the same consideration.

### § 1110.5 Consideration of comments received.

All timely comments will be considered before final action is taken on a rulemaking proposal. Comments which are filed late will be considered so far as possible without incurring additional expense, delay, or prejudice to other parties.

### § 1110.6 Petitions for extension of time to comment.

(a) Any person may petition the Board for an extension of time to submit comments in response to a notice of proposed rulemaking. The petition and one copy must be submitted at least 10 days prior to the deadline for filing comments. The filing of the petition does not automatically extend the time for the filing of petitioner's comments.

(b) The Board will grant the petition only if the petitioner shows a substantive interest in the proposed rule and good cause for the extension, and if the extension is in the public interest. If an extension is granted, notice of it will be published in the FEDERAL REGISTER, and it will apply to all persons.

### § 1110.7 Availability of dockets.

Dockets of pending rulemaking proceedings are maintained in the Office of the Secretary. These dockets are available for inspection by any person, and copies may be obtained upon payment of the prescribed fee.

### § 1110.8 Adoption of final rules.

If, after consideration of all comments received, final rules are adopted, notice will be published in the FEDERAL REGISTER.

### § 1110.9 Petition for waiver.

Any person may petition the Board for a permanent or temporary waiver of any rule. Petitions should be filed with the Secretary, Surface Transportation Board, Washington, DC 20423, and should identify the rule involved

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and the arguments in favor of granting the waiver.

[48 FR 44827, Sept. 30, 1983]

### § 1110.10 Petitions for reconsideration.

Any person may file a petition for reconsideration of the Board's decision in a rulemaking proceeding. Petitions should be filed within 20 days of the date that the final decision is published in the FEDERAL REGISTER and should identify the interest of the petitioner, the specific action sought, and the arguments favoring that action.

## PART 1111—COMPLAINT AND INVESTIGATION PROCEDURES

Sec.

- 1111.1 Content of formal complaints; joinder.
- 1111.2 Amended and supplemental complaints.
- 1111.3 Service.
- 1111.4 Answers and cross complaints.
- 1111.5 Motions to dismiss or to make more definite.
- 1111.6 Satisfaction of complaint.
- 1111.7 Investigations on the Board's own motion.
- 1111.8 Procedural schedule in stand-alone cost cases.
- 1111.9 Procedural schedule to determine whether to use simplified procedures.
- 1111.10 Meeting to discuss procedural matters.

AUTHORITY: 49 U.S.C. 721, 10704, and 11701.

SOURCE: 61 FR 52711, Oct. 8, 1996, unless otherwise noted.

### § 1111.1 Content of formal complaints; joinder.

(a) *General.* A formal complaint must contain the correct, unabbreviated names and addresses of each complainant and defendant. It should set forth briefly and in plain language the facts upon which it is based. It should include specific reference to pertinent statutory provisions and Board regulations, and should advise the Board and the defendant fully in what respects these provisions or regulations have been violated. The complaint should contain a detailed statement of the relief requested. Relief in the alternative or of several different types may be demanded, but the issues raised in the formal complaint should not be broader than those to which complainant's evi-

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dence is to be directed at the hearing. In a complaint challenging the reasonableness of a rail rate, the complainant should indicate whether, in its view, the reasonableness of the rate should be examined using constrained market pricing or using the simplified standards adopted pursuant to 49 U.S.C. 10701(d)(3). If the complainant seeks to use the simplified standards, it should support this request by submitting, at a minimum, the following information:

(1) A general history of the traffic at issue, including how the traffic has moved in the past, how it currently moves, and how it can and will be moved in the future. This information should address not only the physical movement of the traffic, but the type and level of rates actually used. It should include all carriers (rail and nonrail) that have participated in the transportation of this traffic or could do so.

(2) The specific commodity description(s) for the traffic at issue, the shipping characteristics and requirements of the traffic, and the type of railroad cars required or used for the traffic.

(3) All origins, destinations, and origin-destination (O-D) pairs involved in the complaint, by commodity type.

(4) The amount of traffic involved (by commodity type), including total annual carloadings, average tons per car, number of carloads per shipment, and number of carloads per week or month.

(5) Total or average revenue per carload paid to the defendant railroad(s), by commodity type.

(6) The feasibility and anticipated cost of preparing a stand-alone cost presentation in the case.

(7) An estimate of the other costs to be incurred in pursuing the rate complaint, including preparing necessary jurisdictional threshold and market dominance evidence.

(8) The relief sought, including all reparations as well as the level and duration of any rate prescription.

(9) The present value of the relief sought.

(10) The assumptions, calculations and any documentation necessary to support the responses to the above listed factors.